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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 527.

THE UNITED STATES, APPELLANTS,

vs.

JONAS H. LEVY AND ANDERSON D. DIETER.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 527.

THE UNITED STATES, APPELLANTS,

vs.

JONAS H. LEVY AND ANDERSON D. DIETER.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed June* 12, 1871.—J. R.

U. S. Court of Claims, December term, 1871.

JONAS H. LEVY AND ANDERSON D. DIETER
vs.
THE UNITED STATES. } No. 6340.

To the honorable Court of Claims:

The petition of Jonas H. Levy, who resides in the city of Liverpool, England, and Anderson D. Dieter, who resides at the city of New Orleans, both citizens of the United States, respectfully shows:

That in the year 1865 they were associated as commercial partners under the firm of Levy & Dieter, and then engaged in a cotton transaction in the city of New Orleans, as follows, viz:

Petitioners aver that by the 8th section of an act of Congress of July 2d, 1864, it was enacted that it should be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any produce of States declared in insurrection, at such places as should be designated therein and at such prices as should be agreed on with the seller, not exceeding the market-value thereof at the place of delivery, nor exceeding three-fourths of the market-value thereof in the city of New York, at the latest quotations known to the agent purchasing; and under the authority of this act and in accordance therewith, the Secretary of the Treasury, on the 24th day of September, 1864, with the approval of the President, of the same date, issued general regulations for the purchase of products of the insurrectionary States on government account, and, on the 9th of May, 1865, certain amended regulations relating to the same object.

Your petitioners show that, in pursuance of said regulations, they sold to the United States and repurchased through O. N. Cutler, the purchasing agent of the United States, on the 13th of June, 1865, thirty-six bales of cotton, and on the 23d of June, 1865, twelve bales of cotton; that of the previous lot they abandoned nine bales, and of the latter three bales to the said O. N. Cutler, in all twelve bales for the use of the United States.

Your petitioners show that the said twelve bales of cotton were illegally exacted of them and given up by them in error, because,
2 before said payment was made, to wit, on the 13th of June, 1865, the President of the United States had annulled and removed all restrictions on trade east of the Mississippi River, as by law he had a right to do, and that thereby the said 8th section of the act of July 2d, 1864, became inoperative, and was repealed as regards the city of New Orleans, which lies east of the Mississippi River.

Your petitioners further represent that they are advised and believe that the said O. N. Cutler, the aforesaid purchasing agent of the United States, regularly rendered his accounts to the Treasury Department, and that the said twelve bales of cotton were shipped to the government agent at New York, and by him sold, and their proceeds paid over into the Treasury of the United States.

And whereas, from the premises, it appears that the Treasury of the United States has thus erroneously and illegally received the proceeds of said twelve bales of cotton, an implied obligation arises on the part of the United States to refund to your petitioners said proceeds, the amount of which can only be ascertained from the accounts in the Treasury Department.

Wherefore your petitioners submit and pray that a judgment may be

rendered, declaring that the petitioners are entitled to recover the proceeds of said twelve bales of cotton.

Your petitioners further aver that they have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government.

LOUIS JANIN & SONS,
HUGHES, DENVER & PECK,
Solicitors for Claimants, Washington, D. C.

Address of J. H. Levy: Liverpool, England.
Address of A. D. Dieter: New Orleans, La.

Anderson D. Dieter, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as in the said petition stated; that the affiant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

ANDERSON D. DIETER.

Sworn to and subscribed before me this twenty-first day of September, 1868.

[SEAL.] E. G. GOTTSCHALK, *N. P.*

Jonas H. Levy, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof or any interest therein, has been made, except as in the said petition stated; that the affiant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

JONAS H. LEVY.

Sworn to and subscribed before me this twenty-first day of October, 1868.

[SEAL.] H. WILDING,
U. S. Vice-Consul, Liverpool.

4 In the Court of Claims of the United States, December term, A. D. 1870.

JONAS H. LEVY AND ANDERSON H. DIETER
vs.
THE UNITED STATES. } No. 6340.

And now comes the Attorney General, on behalf of the United States, and makes answer to the petition of the claimants herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimants in the sum of the

proceeds of twelve bales of cotton says that they are not indebted to the said claimants in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS H. TALBOT,
Assistant Attorney-General.

Filed August 11, 1871.

5 In the Court of Claims.

JONAS H. LEVY AND ANDERSON D. DIETER
vs.
THE UNITED STATES. } No. 6340.

Set-off and counter-claim.

The said defendants, by Thomas Simons, Assistant Attorney-General, come and say that the said plaintiffs, before and since the commencement of this suit were, and still are, indebted to the said defendants in a large sum of money to wit, $381.28, the same being for internal-revenue tax upon the 48 bales of cotton brought by them into New Or-
6 leans.

Wherefore the Assistant Attorney-General prays that judgment be entered against claimants for said sum of $381.28.

THOMAS SIMONS,
Assistant Attorney-General.

Filed May 17, 1876.

7 In the Court of Claims.

JONAS H. LEVY AND ANDERSON D. DIETER
vs.
THE UNITED STATES. } No. 6340.

At a Court of Claims, held at the Capitol, in the city of Washington, the first day of June, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said Jonas H. Levy and Anderson D. Dieter, claimants, do have and recover of and from the United States the sum of fourteen hundred and fifty-four dollars ($1,454).

By the Court.

A true copy of record.

8 In the Court of Claims of the United States, Dec. term, 1875.

JONAS H. LEVY AND ANDERSON D. DIETER
vs.
THE UNITED STATES. } No. 6340.

From the judgment rendered in the above-entitled cause on the first day of June, 1876, in favor of claimant, the defendants, by their Attor-

ney-General, on the 26 day of August, 1876, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney General.

Filed August 26, 1876.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

9 Court of Claims.

JONAS H. LEVY AND ANDERSON D. DIETER
vs.
THE UNITED STATES. } No. 6340.

Findings of facts.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. On the 12th of June, 1865, there arrived at New Orleans, on the steamer Grey Eagle, from Vicksburg, thirty-six bales of cotton, belonging to Anderson D. Dieter and Jonas H. Levy, constituting the firm of Levy & Dieter. At that time no shipments of cotton to New Orleans
10 were allowed, except such as were consigned to the purchasing-agent of the Treasury. On the 13th of June, 1865, Levy & Dieter executed a bill of sale of all the cotton to the purchasing agent (without any expressed consideration), and on June 18, 1865, the Treasury agent executed to them another bill of sale (also without an expressed consideration) of twenty-seven bales thereof. Levy & Dieter thereupon received the twenty-seven bales, and the Treasury agent retained the nine bales, such interchanged bills of sale being in fact but one transaction, intended to be in compliance with the act July 2d, 1864 (13 Stat. L., 375), and the Treasury regulations thereunder of May 9, 1865. The nine bales were subsequently shipped to S. Draper,
11 United States cotton agent at New York, and sold by him, producing a net average of one hundred and forty-five dollars per bale, or thirteen hundred and five dollars net for the nine bales, and the proceeds have been duly paid into the Treasury.

The twenty-seven bales were returned to Levy & Dieter free from all fees and internal-revenue taxes.

The internal-revenue tax of 2 cents per pound on the first lot of thirty-six bales amounted to $285.40.

When said transaction took place, neither Levy & Dieter nor the purchasing-agent had knowledge of the President's proclamation of June 13, 1865.

12 II. On the 19th June, 1865, there also arrived at New Orleans, on the steamer Saratoga, from some point west of the Mississippi, twelve bales of cotton, also belonging to Levy & Dieter. At that time no shipments of cotton from west of the Mississippi to New Orleans were allowed, except such as were consigned to the purchasing-agent of the Treasury. On the 27th June, 1865, Levy & Dieter executed a bill of sale of the twelve bales to the Treasury agent (there being no expressed consideration), and the Treasury agent executed to them another bill of sale (also without an expressed consideration) of nine bales thereof. Levy & Dieter thereupon received the nine bales and the
13 Treasury agent retained the three bales, such interchange bills of sale being in fact but one transaction, intended to be in com-

pliance with the act July 2d, 1864, § 8, and the Treasury regulations thereunder, of May 9, 1865. The said three bales were subsequently shipped to S. Draper, United States cotton agent at New York, and sold by him at a net average of one hundred and forty-five dollars per bale, producing in all four hundred and thirty-five dollars net; which proceeds have been duly paid into the Treasury.

The nine bales were returned to Levy & Deiter free from all fees and internal-revenue taxes. The internal-revenue tax of 2 cents per
14 pound on the said lot of 12 bales amounted to $95.88. At the date of said transaction neither Levy & Deiter nor the purchasing-agent had knowledge of the President's proclamation of June 24th, 1865.

Court of Claims.

JONAS H. LEVY AND ANDERSON D. DIETER
vs.
THE UNITED STATES. } No. 6340.

Request of claimants for further findings of facts.

I. The internal revenue tax of 2 cents per pound on the twenty-seven bales returned to claimants out of the first lot (36 bales) amounted to the sum of two hundred and fourteen dollars and five cents.

15 Upon the foregoing request the court makes the foregoing order, to wit:

Allowed.

II. The internal-revenue tax of 2 cents per pound on the nine bales returned to claimants out of the second lot (12 bales) amounted to the sum of seventy-one dollars and ninety-eight cents.

Upon the foregoing request the court makes the following order, to wit.

Allowed.

E. & A. C. JANIN,
Attorneys of Claimants.

16 U. S. Court of Claims.

LEVY AND DIETER
vs.
THE UNITED STATES.

And upon the foregoing findings of fact the Court of Claims decides, as—

Conclusions of law.

I. The claimants are entitled to recover the avails of nine bales of cotton exacted from them by the Treasury agent in New Orleans on the 13 June, 1865, amounting to $1,305, and also the avails of the three bales of cotton retained by the Treasury agent in New Orleans on the 27th of June, 1865, amounting to the sum of $435.

The defendants are entitled to recover internal-revenue tax of
17 two cents per pound on the thirty-six bales of cotton returned to them by the Treasury agent at New Orleans on the 12th and 27th of June, 1865, amounting to $286.00.

III. The defendants are not entitled to recover the internal-revenue tax upon the cotton exacted and withheld from the claimants by the Treasury agent at New Orleans on the 13th and 27th of June, 1865.

IV. Judgment should be entered for the claimants for the balance remaining after deducting said set-off in favor of the defendants, to wit, $84,451 69.

By the court.

Filed June 1st, 1871.

18 In the Court of Claims.

JONAS H. LEVY AND ANDERSON D. DIETER
vs
THE UNITED STATES. } No. 6340.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for the defendants for the allowance of an appeal, as filed in the clerk's office August 26, 1876, and of the order of the chief justice of said court allowing the same; of the findings of fact by the court, and the conclusion of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this ninth day of October, A. D. 1876.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 527. The United States, appellants, vs. Jonas H. Levy and Anderson D. Dieter. Court of Claims. Filed 14th October, 1876.